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8 Attorney for Plaintiff,
9 **PERSONAL AUDIO, LLC**

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 PERSONAL AUDIO, LLC,

13 Plaintiff,

14 v.

15 TOGI ENTERTAINMENT, INC. et al.

16 Defendant.

ACTION NO. 3:14-mc-80025-RS

**DECLARATION OF JEREMY S.
PITCOCK IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
THIRD PARTY ELECTRONIC
FRONTIER FOUNDATION'S
NOTICE OF MOTION AND
MOTION TO QUASH AND FOR
PROTECTIVE ORDER**

Date: Wednesday, Mar. 5, 2014

Time: 1:00 p.m.

Dept.: Courtroom A, 15th Floor

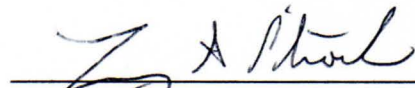
Judge: Honorable Nathanael Cousins

1 I, Jeremy S. Pitcock, declare as follows:

- 2 1. My name is Jeremy S. Pitcock. I am over the age of twenty-one (21) years, am
3 competent to testify on the matters stated herein, have personal knowledge of the facts
4 and statements in this declaration and declare that each of the facts is true and correct.
- 5 2. I provide this declaration in support of Plaintiff Personal Audio, LLC's opposition to
6 Third Party Electronic Frontier Foundation's ("EFF") Motion to Quash and for
7 Protective Order.
- 8 3. I am a lead counsel for Plaintiff Personal Audio, LLC in litigations pending in the
9 United States District Court, Eastern District of Texas, consolidated for pre-trial into
10 lead case 2:13-cv-13, *Personal Audio, LLC v. Togi Entertainment, Inc. et al.*
- 11 4. I have reviewed Third Party Electronic Frontier Foundation's Motion to Quash and for
12 Protective Order and the accompanying affidavits.
- 13 5. On December 20, 2013, I executed a subpoena to the EFF on behalf of Personal Audio,
14 LLC. This subpoena was later withdrawn and reissued on January 17, 2014.
- 15 6. On December 31, 2013, I spoke with Ms. Vera Ranieri of Greenberg Traurig LLP, who
16 represented herself as counsel for the EFF in connection with the original subpoena
17 Personal Audio.
- 18 7. During that conversation, Ms. Ranieri requested an extension to respond to the
19 subpoena to January 31, 2014. I explained that Personal Audio sought to take the
20 deposition before certain deadlines in *Electronic Frontier Foundation v. Personal*
21 *Audio*, IPR2014-00070, Patent Trial and Appeal Board (the "PTO Action") and *Fox*
22 *Networks Group v. Personal Audio, LLC*, Case No. 1:13-cv-11794 (D. Mass) (the
23 "Massachusetts Case").
- 24 8. However, I did not state that the information was needed for Personal Audio's response
25 to EFF's petition for *inter partes* review or in relation to a motion hearing and case
26 management conference in the Massachusetts case. While I did want to complete the
27 deposition because I believed in good faith that the information obtained may very well
28 be useful in the litigation pending in Texas and elsewhere and wanted to take it earlier
rather than later, I did not believe that the deposition was necessary to either of those
proceedings, and in fact, despite the refusal of the EFF to provide a deponent, Personal
Audio has had no trouble responding to the various requirements in the multiple
proceedings.
9. As shown in Exhibit 6 to the Ranieri Affidavit, which is a true and correct copy of the
correspondence between myself and Ms. Ranieri, our communications were limited to
discovery for the Texas action.
10. As discussed in the Motion by the EFF, I, as counsel for Personal Audio, LLC, am

1 subject to a prosecution bar that prohibits any involvement by myself in the IPR. I have
2 nothing to do with those proceedings, accordingly.

3 I declare under penalty of perjury under the laws of the United States of America that the
4 foregoing is true and correct, and that this declaration was executed on this 17th day of
5 February 2014, in Plano, Texas.

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8 Jeremy S. Pitcock
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